

### **REMARKS**

This responds to the Office Action mailed on September 21, 2006, and the references cited therewith.

Claim 7 is amended. Claims 1-16 are pending in this application.

#### **103 Rejection of the Claims**

Claims 1-3 and 6-10 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Schoonen (U.S. Patent No. 6,230,927) in view of Momich et al. (U.S. Patent No. 6,335,907).

#### **Claims 1-3 and 6**

Applicant traverses the rejection of claims 1-3 and 6 since, even if combined, the combination does not include or suggest each limitation recited in the claim. For instance, Applicant cannot find in the cited combination: “giving the patient a unique authorization code that is not capable of being reused.” In contrast, the Schoonen discusses a prescription signal that includes “information about at least one prescribed drug for a patient.” (Col. 5, lines 39-41). The Momich reference states that a prescription can include the date issued. However, even if the prescription signal discussed by Schoonen included a date of issue, there is nothing in the asserted combination that prevents the reuse of such a signal. For instance, the same prescription can be given to the patient on the same day. The Examiner is apparently asserting such subject matter is inherent in the Schoonen (or Momich) reference. Applicant traverses.

Applicant respectfully disagrees because the Office Action has not established a *prima facie* case of inherency because, as recited in MPEP § 2112, “In relying upon the theory of inherency, the examiner must provide basis in fact and/or technical reasoning to reasonably support the determination that the allegedly inherent characteristic *necessarily* flows from the teachings of the applied prior art,” citing *Ex parte Levy*, 17 USPQ2d 1461, 1464 (Bd. Pat. App. & Inter. 1990) (emphasis in original). Here, the Office Action cannot point to any teaching that the prescription signal of the Schoonen/Momich combination cannot be reused, let alone that it is incapable of being reused. Thus, the Office Action does not even assert that the allegedly inherent characteristic is necessary, let alone provide a basis in fact and/or technical reasoning. Applicant respectfully submits that “giving the patient a unique authorization code that is not capable of being reused,” does not necessarily flow from the asserted combination.

Claims 2-3 and 6 include each limitation of their parent claim and are therefore also not anticipated by the cited reference. Reconsideration and allowance is respectfully requested.

Claims 7-10

Applicant has amended claim 7 to better describe the subject matter recited in the claim. Applicant believes claim 7 is not obvious in view of the cited references since, even if combined, the combination does not include each limitation recited in the claim. For instance, Applicant cannot find in the cited combination: “providing to the patient an authorization code unique to the authorized prescription, the authorization code not capable of being reused for other prescriptions; the patient inputting the authorization code into the dispenser and the patient entering separate patient authorization date into the dispenser; the dispenser determining whether the authorization code correlates to the patient authorization date,” as recited in claim 7. As discussed above, Applicant believes the asserted combination does not include the “authorization code unique to the authorized prescription, the authorization code not capable of being reused for other prescriptions” subject matter. Moreover, the combination also does not teach: the patient entering separate patient authorization date into the dispenser, and the dispenser determining whether the authorization code correlates to the patient authorization date, as recited in claim 7.

Claims 8-10 include each limitation of their parent claim and are therefore also not anticipated by the cited reference. Reconsideration and allowance is respectfully requested.

Claims 4-5 and 11 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Schoonen (U.S. Patent No. 6,230,927), modified by Momich et al. (U.S. Patent No. 6,335,907) and further in view of Lion (U.S. Patent No. 4,732,411).

Claims 4-5 and 11 include each limitation of their respective parent claims and are not obvious over the cited references since the combination does not overcome the deficiencies of the primary reference as discussed above regarding claims 1 and 7. Reconsideration and allowance is respectfully requested.

Claims 12-13 and 15-16 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Schoonen (U.S. Patent No. 6,230,927) in view of Williams et al. (U.S. Patent No. 6,036,812) and Chudy (U.S. Patent No. 6,370,841).

Applicant believes claim 12 is not obvious in view of the cited references since, even if combined, the combination does not include each limitation recited in the claim. For instance, Applicant cannot find in the cited combination: the dispenser labeling the therapeutic product with information unique to the adjudicated prescription, and the dispenser scanning the labeled therapeutic product to verify the labeled therapeutic product before delivering the therapeutic product to the patient, as recited in claim 12. None of the references describe or suggest scanning a labeled product after it is labeled.

Claims 13 and 15-16 include each limitation of their parent claim and are therefore also not anticipated by the cited reference. Reconsideration and allowance is respectfully requested.

Claim 14 was rejected under 35 U.S.C. § 103(a) as being unpatentable over Schoonen (U.S. Patent No. 6,230,927), modified by Williams et al. (U.S. Patent No. 6,036,812) and Chudy (U.S. Patent No. 6,370,841), further in view of Momich et al. (U.S. Patent No. 6,335,907).

Claim 14 includes each limitation of its parent claim and is not obvious over the cited references since the combination does not overcome the deficiencies of the primary reference as discussed above regarding claim 12. Reconsideration and allowance is respectfully requested.

**CONCLUSION**

Applicant respectfully submits that the claims are in condition for allowance, and notification to that effect is earnestly requested. The Examiner is invited to telephone Applicant's attorney at (612) 359-3267 to facilitate prosecution of this application.

If necessary, please charge any additional fees or credit overpayment to Deposit Account No. 19-0743.


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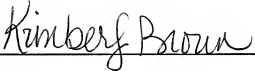
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**CERTIFICATE UNDER 37 CFR 1.8:** The undersigned hereby certifies that this correspondence is being filed using the USPTO's electronic filing system EFS-Web, and is addressed to: Mail Stop Amendment, Commissioner of Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on this 21<sup>st</sup> day of February 2007.

KIMBERLY BROWN

Name

  
Signature